

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

DONNA CURLING, *et al.*

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, *et al.*,

*Defendants.*

CIVIL ACTION

FILE NO. 1:17-cv-2989-AT

**STATE DEFENDANTS' REQUEST FOR STATUS CONFERENCE AND  
NOTICE OF DECERTIFICATION OF GEMS/DRE SYSTEM**

Defendants Secretary of State Brad Raffensperger, State Election Board, and the State Election Board Members (collectively, the “State Defendants”) request an immediate status conference with the Court regarding State Defendants’ ability to dispose of the DRE units that are being collected from the counties, showing the Court as follows:

1. On December 6, 2019, this Court held a status conference regarding outstanding issues in this case.
2. At the status conference, Plaintiffs represented that they could easily create a statistical sample of machines they wished for the State to maintain, avoiding the significant expense of storing more than 30,000 units

that would never be used again. *See* Transcript of December 6, 2019 Status Conference at 20:19-24; 22:21-23:14.

3. At the status conference, the Court said, “you are all going to meet and talk about the disposition of the machines. I would like you to do that -- it is Friday -- to have it done by -- try today to figure out your schedule and have an objective for trying to get it done by next Friday.” Transcript, at 85:25-86:5. Next Friday following the status conference was December 13, 2019.

4. State Defendants advised the Court during the status conference that time is of the essence for the State because the process of collecting the existing units is ongoing and storage space was (and is) quickly becoming an issue as BMDs are deployed. Transcript, at 59:11-20.

5. On December 10, 2019, State Defendants requested the statistical sample Plaintiffs said they could create and Plaintiffs asked State Defendants if they had a proposal to make. *See* Emails attached as Ex. A.

6. State Defendants pointed out on December 13 and December 18 that Plaintiffs had received complete inventories of all equipment on July 19, 2019 and again requested the statistical sample from Plaintiffs that they told the Court they could prepare. *See* Emails attached as Ex. B.

7. On December 20, 2019, Plaintiffs responded that, in order to design a statistical sample, they needed a comprehensive inventory (which was produced in July) and “For each piece of equipment at issue, the precinct and election during which it was last used”—information the State does not possess. *See* Emails attached as Ex. C.

8. In the meantime, the collection of DREs and deployment of BMDs has continued, including counties where this Court previously ordered sequestration of machines. [Docs. 212, 251].

9. On December 30, 2019, the Secretary of State, acting according to his statutory authority, completely decertified the entire GEMS/DRE system. *See* Decertification Order, attached as Ex. D.

10. As a result of the decertification, no component of the GEMS/DRE system, including the old optical scanners, memory cards, GEMS databases, or DREs can be used in Georgia elections.

11. As State Defendants reiterated at the status conference, this case is moot and there is nothing further for this Court to do regarding the GEMS/DRE system.

12. Given Plaintiffs’ lack of any proposed statistical sample, the decertification of the GEMS/DRE system, and the complete lack of any basis to continue to preserve the DREs at a significant cost to the State, State

Defendants request a status conference for immediate authorization of the disposal of the DREs in accordance with state law and existing state contracts. Immediate amendment of this Court's order regarding the preservation of the DREs, GEMS, and other election equipment [Doc. 668] is required. At the very least, guidance from the Court is required regarding machines sequestered by order of this Court and whether those machines must continue to be maintained separately.

Respectfully submitted this 30th day of December, 2019.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing **STATE DEFENDANTS' REQUEST FOR STATUS CONFERENCE AND NOTICE OF DECERTIFICATION OF GEMS/DRE SYSTEM** has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Bryan P. Tyson  
Bryan P. Tyson